$306/–, allowed various refunds to the debtor, totalling $950/–."

To put it briefly, the Official Assignee treated the order of discharge on the assumption that the net income of the debtor was to be assessed on an annual and not a monthly basis.

This Motion came before Gordon-Smith J. who confirmed the Official Assignee's interpretation of the original order and his action thereon, and to make the matter clear for the future, varied the original order by the addition of the following words:—

"Provided that if the net income of the debtor does not amount to the said sum of $306/– in any month or months during a calendar year the Official Assignee shall from time to time refund to the debtor such sum or sums out of the balance in his hands arising from the excess so paid to him as aforesaid as will be sufficient to make up such net income to the said sum of $306/– a month."

The appellant, who is one of the twenty-eight creditors, lodged the only objection to the Official Assignee's interpretation of this order, the other creditors supported the Official Assignee's action, and Mr. Rajendra who appeared on the appeal for the largest creditor supported the order on the grounds that such order was on the whole for the benefit of the creditors, and that the debtor in order to retain his appointment on the Rubber Assessment Committee should receive a sufficient income to maintain himself properly.

Mr. Braddell on behalf of the appellant argued that the order of Gordon-Smith J. was bad, that the Official Assignee had no *locus standi* in the matter, and that only the bankrupt could apply for a revision of the order of discharge. The authority he principally relied on was *In re John Roberts & Co.*[3]. In that case it was held that an application, under the *proviso* at the end of section 8 (2) of the Bankruptcy Act 1890 for the modification of terms for a conditional order of discharge, ought to be made by the bankrupt himself and not by the trustee in bankruptcy. A similar *proviso* occurs in section 28 (ii) of the Bankruptcy Enactment and is as follows:—

"Provided that if, at any time after the expiration of two years from the date of any conditional order made under this section, the bankrupt shall satisfy the Court that there is no reasonable probability of his being in a position to comply with the terms of such order the Court may modify the terms of the order or any subsequent order in such manner and upon such conditions as it may think fit."

That case, however, is not in my opinion an authority in regard to this Motion which is one under section 78 (iii) for directions, and the Court has a very wide discretion to vary any order made under its bankruptcy jurisdiction. Section 85 (i) of the Bankruptcy Enactment (section 108 (1) of the 1914 English Act) is as follows:—

"The Court may review, rescind, or vary any order made by it under its bankruptcy jurisdiction."

According to *Williams* on Bankruptcy, 15th edition, page 442, the powers of the Court under this sub-section are, in a proper case, "almost without limit". This appears to be so, for in the case of *In re a Debtor,*[1] the Court of Appeal held that there was jurisdiction under section 108 (1) of the Act to rehear an application for discharge and vary the order of discharge, although the order of discharge had previously become effective. There is, therefore, ample authority to justify the order of Gordon-Smith J. which was not so much the variation of an order of discharge as the interpretation of one. If it was a variation he was entitled to make it.

As regards the merits, the order is fair and reasonable. It would obviously be most unjust, when it is agreed that the debtor requires an income of $306/– *per mensem* to live on, not to average his income over an annual period. The original order was made in the form it was, probably because it is the custom in Malaya to fix all salaries on a monthly basis.

I would dismiss the appeal with costs.

McElwaine, C.J. (S.S.)—I concur.

Cussen, J.—I concur.

Appeal dismissed with costs.

[REVISIONAL CRIMINAL JURISDICTION]

HORNE, J.

February 6, 1940.

PUBLIC PROSECUTOR

v.

NG TAI AND ONG TENG OON.

[NEGRI SEMBILAN MISCELLANEOUS CRIMINAL APPLICATION No. 2 of 1940.]

Criminal Procedure Code (Cap. 6) s. 295 (i)—Order for police supervision after a sentence of fine.

The accused were charged before the Magistrate, Seremban on the 6th January, 1940, with theft of scrap iron an offence under section 379 of the Penal Code (Cap. 45) and were convicted and sentenced as follows:—

"Fine $10/– or 14 days R.I. and one year's police supervision."

Upon revision (on reference by the Public Prosecutor).

Held, that police supervision could only be imposed when a substantive sentence of imprisonment was also imposed.

CRIMINAL REVISION.

T. D. Wallace, Deputy Public Prosecutor, as *amicus curiae.*

Horne, J.—The sentences imposed in these cases have been brought to the notice of the Court.

The sentence is as follows:—

"Fine $10/- or 14 days and one year's police supervision."

It is quite clear from section 295 (i) of the Criminal Procedure Code that police supervision can only be imposed when a substantive sentence of imprisonment is also imposed.

The concluding words of the sentence—

"supervision of the police for a period of not more than three years commencing immediately after the expiration of the sentence passed on him for the last of such offences"—

show that "any other punishment" occurring earlier in the sentence must be construed as a punishment by imprisonment only.

The sentences in these cases must be varied by quashing the order of police supervision.

Order for police supervision quashed.

[APPELLATE CRIMINAL JURISDICTION]
COURT OF APPEAL.

POYSER, C.J. (F.M.S.), McELWAINE, C.J. (S.S.) & TERRELL, J.A. (MALAYA).

March 3, 1939.

NG LAM v. PUBLIC PROSECUTOR.

[NEGRI SEMBILAN CRIMINAL APPEAL No. 87 of 1938]

Penal Code (c. 45) S. 302—Murder—Defence of statutory exception—Extent of burden cast on Defence.

In a trial for murder it is the duty of the prosecution to prove beyond reasonable doubt the prisoner's guilt and the burden of proving the existence of circumstances bringing the case within any statutory exception lies upon the prisoner although the burden on the prisoner is very much less than that on the prosecution and amounts only to stablising a balance of probability in his favour.

Decision of **Woolmington v. Director of Public Prosecutions** (1935) A.C. 462 explained.

Cases referred to:—

(1) *Chia Chan Bah v. The King,* 7 M.L.J. 147; (1938) S.S.L.R. 223.

(2) *Public Prosecutor v. Alang Mat Nasir bin Anjang Talib and Chen Lip,* 7 M.L.J. 153 (1938) F.M.S.L.R. 47.

(3) *R. v. Chhui Yi,* 5 M.L.J. 177, (1936) S.S.L.R. 129.

(4) *Sodeman v. Rex,* (1936) 2 All E. R. 1138.

(5) *Woolmington v. Director of Public Prosecutions* (1935) A.C. 462.

CRIMINAL APPEAL.

John L. Woods, for the Appellant.

T. V. A. Brodie and J. F. Draper, for the Public Prosecutor.

Cur. Adv. Vult.

The Judgment of the Court of Appeal **(Poyser, C.J. (F.M.S.), McElwaine, C.J. (S.S.) & Terrell, J.A.)** was as follows:—

This case has been very fully argued. The evidence abundantly established that the appellant committed culpable homicide but it is argued that had there been a proper direction to the assessors they might have found that the accused, when he killed the deceased, only exceeded the right of defence of property or of his person or acted under grave and sudden provocation.

Mr. Woods argued that the Judge was wrong in telling the assessors that "the burden is on the accused to prove the existence of circumstances bringing the case within any exception" although he also told them that "the Prosecution must prove by positive evidence beyond any reasonable doubt the guilt of the accused. The burden on the accused is very very much less. He is entitled to protection from any evidence whatsoever either from evidence led by the prosecution or that led by himself and the burden on him may fairly be stated to be equivalent to the burden on a plaintiff in a civil suit, and the rule in a civil suit is that a plaintiff or a defendant has discharged the onus of proof which lies upon him if he established a balance of probability in his favour."

This summing up indicates that the learned Judge had in mind *Sodeman v. Rex*(4) and *Chia Chan Bah v. The King*(1).

Mr. Woods, however, argued that this latter case put the onus on the accused too high and that *Public Prosecutor v. Alang Mat Nasir bin Anjang Talib and Chen Lip,*(2) was the more correct decision.

Mr. Woods' argument was that it is enough for the accused to raise a doubt as to whether he came